

6.0 Other Federal Laws and Executive Orders

In addition to being prepared in accordance with the requirements of the *MAGNUSON-STEVENS ACT* and *NEPA*, this document also addresses requirements of other applicable federal laws and Executive Orders (EOs). These laws and orders are described here and their applicability to this action assessed.

The Regulatory Flexibility Act (RFA) and EO 12866 do not apply to programmatic EISs, such as this one, that will not immediately result in regulations. However, information and analysis in Chapter 4 of this EIS would be relevant to RFA and EO 12866 analyses on future regulations developed from this EIS. When the Council and NOAA Fisheries develop regulatory programs to implement the preferred alternative, RFA and EO 12866 analysis requirements would apply to those programs.

6.1 Other Federal Laws

6.1.1 Coastal Zone Management Act

Section 307(c)(1) of the federal Coastal Zone Management Act (CZMA) of 1972 requires all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. Any alternative adopted by the Council would be implemented in a manner that is consistent to the maximum extent practicable with the enforceable policies of the approved coastal zone management programs of Washington, Oregon, and California. The relationship of the groundfish FMP with the CZMA is discussed in Section 11.7.3 of the groundfish FMP. The groundfish FMP has been found to be consistent with the Washington, Oregon, and California coastal zone management programs.

Under the CZMA, each state develops its own coastal zone management program which is then submitted for federal approval. This has resulted in programs which vary widely from one state to the next. None of the alternatives under consideration is expected to affect any state's coastal management program.

6.1.2 Endangered Species Act

NMFS issued *BIOLOGICAL OPINIONS* (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River,

Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery BO (December 15, 1999) incidental take statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002 that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

6.1.3 Marine Mammal Protection Act

The MMPA of 1972 is the principle federal legislation that guides marine mammal species protection and conservation policy in the United States. Under the MMPA, NMFS is responsible for the management and conservation of 153 stocks of whales, dolphins, porpoise, as well as seals, sea lions, and fur seals; while the U.S. Fish and Wildlife Service is responsible for walrus, sea otters, and the West Indian manatee. Off the West Coast, the Steller sea lion (*Eumetopias jubatus*) Eastern stock, Guadalupe fur seal (*Arctocephalus townsendi*), and Southern sea otter (*Enhydra lutris*) California stock are listed as threatened under the ESA and the sperm whale (*Physeter macrocephalus*) Washington, Oregon, and California stock, humpback whale (*Megaptera novaeangliae*) Washington, Oregon, and California - Mexico Stock, blue whale (*Balaenoptera musculus*) Eastern north Pacific stock, and Fin whale (*Balaenoptera physalus*) Washington, Oregon, and California stock are listed as depleted under the MMPA. Any species listed as endangered or threatened under the ESA is automatically considered depleted under the MMPA.

The West Coast groundfish fisheries are considered a Category III fishery, indicating a remote likelihood of or no known serious injuries or mortalities to marine mammals, in the annual list of fisheries published in the Federal Register. Based on its Category III status, the incidental take of marine mammals in the West Coast groundfish fisheries does not significantly impact marine mammal stocks. None of the programmatic alternatives would be expected to increase impacts on any marine mammal stock.

6.1.4 Migratory Bird Treaty Act

The *MIGRATORY BIRD TREATY ACT* of 1918 (*MBTA*) was designed to end the commercial trade of migratory birds and their feathers that, by the early years of the 20th century, had diminished populations of many native bird species. The MBTA states that it is unlawful to take, kill, or possess migratory birds and their parts (including eggs, nests, and feathers) and is a shared agreement between the United States, Canada, Japan, Mexico, and Russia to protect a common migratory bird resource. The MBTA prohibits the directed take of seabirds, but the incidental take of seabirds does occur. As discussed in Section 4.3.3.2, the preferred alternative is unlikely to affect the incidental take of seabirds protected by the MBTA.

6.1.5 Paperwork Reduction Act

The Magnuson-Stevens Act requires collection of information on bycatch and bycatch mortality, and each of the program alternatives addresses this requirement to some degree. Regulatory programs to implement the preferred alternative would likely result in increased reporting, whether via logbooks or through carrying an electronic monitor or human observer. Requirements to fill out logbooks or to carry electronic monitors or human observers are subject to review under the PRA. No regulations subject to the PRA are proposed to immediately be implemented via this EIS. When future regulatory programs are proposed, the appropriate PRA analysis would be completed at that time.

6.2 Executive Orders

6.2.1 EO 12898 Environmental Justice

EO 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires federal agencies to identify and address “disproportionately high adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations in the United States.” NOAA guidance, NAO 216-6, at §7.02, states that “consideration of EO 12898 should be specifically included in the NEPA documentation for decision making purposes.” Agencies should also encourage public participation—especially by affected communities—during scoping as part of a broader strategy to address environmental justice issues.

The environmental justice analysis must first identify minority and low-income groups that live in the project area and may be affected by the action. Typically, census data are used to document the occurrence and distribution of these groups. Agencies should be cognizant of distinct cultural, social, economic, or occupational factors that could amplify the adverse effects of the proposed action. (For example, if a particular kind of fish is an important dietary component,

fishery management actions affecting the availability or price of that fish could have a disproportionate effect.) In the case of Indian tribes, pertinent treaty or other special rights should be considered. Once communities have been identified and characterized, and potential adverse impacts of the alternatives are identified, the analysis must determine whether these impacts are disproportionate. Because of the context in which environmental justice is developed, health effects are usually considered, and three factors may be used in an evaluation: whether the effects are deemed significant, as the term is employed by NEPA; whether the rate or risk of exposure to the effect appreciably exceeds the rate for the general population or some other comparison group; and whether the group in question may be affected by cumulative or multiple sources of exposure. If disproportionately high adverse effects are identified, mitigation measures should be proposed. Community input into appropriate mitigation is encouraged.

This EIS describes tribal communities affected by the program alternatives and impacts to those and other communities (see Sections 3.4.4 and 3.4.6). Available demographic data show that coastal counties where these communities are located are variable in terms of social indicators like income, employment, and race and ethnic composition. However, equivalent data specific to the groups directly affected by the alternatives are not available. Treaty tribes harvesting West Coast groundfish are part of the Council's decision-making process on groundfish management issues, and tribes with treaty rights to salmon, groundfish, or halibut have a seat on the Council.

The preferred alternative could affect groundfish allocations or harvest levels that could in turn disproportionately impact low income and minority populations.

6.2.2 EO 13132 (Federalism)

EO 13132 enumerates eight "fundamental federalism principles." The first of these principles states "Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people." In this spirit, the EO directs agencies to consider the implications of policies that may limit the scope of or preempt states' legal authority. Preemptive action having such "federalism implications" is subject to a consultation process with the states; such actions should not create unfunded mandates for the states; and any final rule published must be accompanied by a "federalism summary impact statement." The Council process offers many opportunities for states (through their agencies, Council appointees, consultations, and meetings) to participate in the formulation of management measures. This process encourages states to institute complementary measures to manage fisheries under their jurisdiction that may affect federally-managed stocks. The preferred alternative does not have federalism implications subject to EO 13132.

6.2.3 EO 13175 (Consultation and Coordination With Indian Tribal Governments)

EO 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.

The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared federal and tribal fishery resources. At Section 302(b)(5), the Magnuson-Stevens Act reserves a seat on the Council for a representative of an Indian tribe with federally-recognized fishing rights from California, Oregon, Washington, or Idaho.

The U.S. government formally recognizes the four Washington coastal tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish. In general terms, the quantification of those rights is 50% of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas (described at 50 CFR 660.324). Each of the treaty tribes has the discretion to administer their fisheries and to establish their own policies to achieve program objectives. The alternatives in this EIS were developed in consultation with the affected tribes and the Council's tribal representative participated in the review and adoption of the preferred alternative.

6.2.4 EO 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds)

EO 13186 supplements the MBTA (above) by requiring federal agencies to work with the U.S. Fish and Wildlife Service to develop memoranda of agreement to conserve migratory birds. NMFS intends to develop its memorandum of understanding in 2005. The protocols developed by this consultation will guide agency regulatory actions and policy decisions in order to address this conservation goal. The EO also directs agencies to evaluate the effects of their actions on migratory birds in environmental documents prepared pursuant to the NEPA.

Section 4.3.32 evaluates impacts to seabirds and concludes that the none of the program alternatives would significantly impact seabirds.